



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,835	10/12/2005	Bernard John Cooper	70403-0021	3756
20915 7590 04/28/2009 MCGARRY BAIR PC 32 Market Ave. SW SUITE 500 GRAND RAPIDS, MI 49503			EXAMINER ZHU, WELPING	
			ART UNIT 1793	PAPER NUMBER
			NOTIFICATION DATE 04/28/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@mcgarrybair.com



Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

wk

Mailed: **APR 28 2009**

In re application of

Cooper et al.

Serial No. 10/531,835

Filed: April 18, 2005

For: Treatment Of Smelting By-Products

:  
:  
: DECISION ON  
: PETITION

This is a response to a Petition filed under 37 CFR 1.181 to invoke the supervisory authority of the Director of the U. S. Patent and Trademark Office to review a restriction requirement filed April 3, 2009.

On February 21, 2008, a Non-Final Rejection was issued by the Examiner whereby the Examiner required a restriction between three inventions. The Examiner stated the common technical feature in all groups is the method of treating the spent potliner. The Examiner further asserts that this element could not be a special technical feature under PCT Rules 13.2 because the element is shown in the prior art (Snodgrass et al. US 4,444,740).

Applicants assert that since the IPEA did not find a lack of unity of invention, the Examiner has misapplied the correct standard of review in determining whether there is unity of invention. Applicants further assert that the technical feature common to all claims is a specific method of treating a spent potliner.

As provided in 37 CFR 1.475(a), a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in a national stage application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The Examiner in reviewing a national stage application is not precluded from a determination that a lack of unity is lacking even though the International Preliminary Examination Authority (IPEA) did find unity of invention. The original lack of unity was proper on the claims as originally filed.

The original claims have been amended during the course of prosecution and the Examiner has made an art rejection to the claims thereby demonstrating that the technical features now claimed do not define a contribution over the prior art.

Serial Number: 10/531,835

## DECISION

The Petition is **DENIED**.



Gregory L. Mills, Acting Director  
Technology Center 1700  
Chemical and Materials Engineering

Joel E. Bair  
MCGARRY BAIR PC  
32 Market Ave. SW  
SUITE 500  
GRAND RAPIDS MI 49503